IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.822 OF 2004

The Commissioner of Income-tax ..Appellant.

V/s.

Shri Shankar S.S.K. Ltd. ..Respondent.

Mr.P.S.Sahadevan for appellant.

Mr.A.K.Jasani for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 3RD SEPTEMBER, 2007.

P.C. :-

Heard. Admit on the following questions of law:-

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in upholding the order of CIT(A) deleting the additions made by the assessing officer in respect of the deductions made by the assessee from cane price towards following

   (a) C.M. Relief fund Rs.03,83,890/-

   (b) Cane development fund Rs.13,64,320/-

   (c) Area development fund Rs.04,26,335/-

2. Whether on the facts and circumstances of the case and in law the Tribunal was right in permitting deductions of recoveries made from cane price for Chief Minister Relief Fund, Small Saving Scheme, Area development fund and Cane development fund on the principle of diversion by overriding title stated in the decision in 245 ITR 498 (Bom), even though these amounts were not disbursed to the said funds during year under appeal and deductions

of Rs.10,13,282/- was allowed in the assessment order on actual disbursement / payment ?

2. By consent of the learned counsel on both sides, the appeal is taken up for final hearing.

3. Counsel on both sides agree that the issue raised herein are covered by the Judgment of the Apex Court in the case of **Siddheshwar Sahakari Sakhar Karkhana Ltd. V/s. Commissioner Income Tax** reported in **270 I.T.R. 1 (S.C.)** and the decision of this Court in the case of **Commissioner of Income Tax V/s. Malegaon Sahakari Sakhar Karkhana Ltd.** reported in **279 I.T.R. 19 (Bom.)**. Accordingly, the questions framed hereinabove is answered by holding that the contribution to the C.M. relief fund is liable to be deducted from the income of the assessee whereas contribution to the cane development is assessable to tax. As regard the contribution to the area development fund is concerned, as per the order of the Apex Court in the case of Siddheshwar Sahakari Sakhar Karkhana (supra) the issue is remanded to the assessing officer for de novo consideration.

4. The appeal is disposed of accordingly with no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELL0, J.)**